

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 19, 2004

D042768 People v. Thammavong

The order is affirmed. Huffman, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D042977 People v. Arellano

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D044461 Buono v. Superior Court of San Diego County/Presidio Mortgage, Inc., et al.

The petition is denied.

D040806 People v. Lewis

The trial court's denial of probation is reversed. The matter is remanded for resentencing. In all other respects the judgment is affirmed. CERTIFIED FOR PUBLICATION. Benke, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D042092 People v. Gilliam

The conviction for false imprisonment is reversed; in all other respects the judgment is affirmed. Benke, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D043513 People v. Hyslop

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Huffman, J.

D042540 Payne v. Volume Services America, Inc., et al.

Court convened at 10:00 A. M.

Associate Justice Gilbert Nares is designated to act as a hearing officer and referee in this matter.

Deputy Clerk: C. Tunnell

Deputy Clerk: D. Moore, recording

CHP Officer: Chris Gonzales

Donna Lynn Foster in Propria Persona

In re Donna Lynn Foster, CSR # 7698, Official Reporter, present on order to show cause why sanctions should not be imposed pursuant to rule 46.5 of the California Rules of Court and/or why she should not be declared not competent to act as an official reporter in any court pursuant to the provisions of Government Code section 69944 for her failure to prepare and file the reporter's transcript in the following case: Patricia Capritta Payne v. Volume Services America, Inc., et al., D042540

Jill Amanda Matuk is sworn and examined.

The following exhibits are marked for identification and received into evidence.

Court's exhibit 1 - Request for Transcripts - (August 14, 2003)

Court's exhibit 2 - Request for Transcripts - (March 10, 2004)

Court's exhibit 3 - Notice to Reporter to Prepare Omitted Portions of Reporter's Transcript
(file-stamped March 9, 2004 by superior court)

Court's exhibit 4 - Request for Transcripts - (May 7, 2004)

Court's exhibit 5 - Default letter to CSR Donna Foster - (May 19, 2004)

Court's exhibit 6 - Amended Designation of the Record on Appeal (file-stamped July 31, 2003 by superior court)

Court's exhibit 6-A - Respondent's Designation of Additional Proceedings for Reporters' Transcript (file-stamped August 12, 2003 by superior court)

FOURTH APPELLATE DISTRICT

DIVISION ONE

JULY 19, 2004 (Continued)

D042540 Payne v. Volume Services America, Inc., et al.

(Hearing Continued)

Court's exhibit 7 Motion to Augment Record on Appeal (file-stamped April 20, 2004 by Court of Appeal) and Augment Order (file-stamped May 7, 2004 by Court of Appeal)

Donna Lynn Foster sworn and examined.

The following exhibits are marked for identification and received into evidence.

Respondent's exhibit A - Receipt for Reporter's Transcript (dated July 20, 2004 by CSR Foster and July 21, 2004 by Greg Hohman superior court appeals clerk) (received from CSR Foster)

Respondent's exhibit B - Reporter's Request for Extension of Time (30) days signed on November 11, 2003 and Reporter's Request for Extension of Time dated March 18, 2004 (45) days returned by Court of Appeal re: Court does not rule on Rule 12 requests (received from CSR Foster)

Lana May Fruke is sworn and examined.

The following exhibit is marked for identification and received into evidence.

Respondent's exhibit C - Sample Letter to court reporters who receive a default letter (received from Lana Fruke)

The following persons were recalled: Jill Matuk, Lana Fruke and Donna Foster

Donna Foster is directed to provide the court with a copy of Invoice or letter to Atty. Stevens to pay additional fee. When this is received, it will be marked as an exhibit.

The hearing is continued to July 20, 2004 at 9:30 A. M.

Greg Hohman and Sandra Marlett, appeal clerks, are ordered to appear. Lana Fruke assured the court that they will appear.

Court adjourns at 11:27 A. M.

D042720 People v. Jordan

The petition for rehearing is granted.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 20, 2004

D044057 Teresa M. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petitions are denied. Nares, J.; We Concur: McConnell, P.J., Huffman, J.

D043302 People v. Superior Court of San Diego County/R.V.

The court has previously ordered much of the record and briefing in this matter to be filed under seal. In addition, the trial court ordered portions of the record sealed and relied upon the sealed materials in issuing the order that is under review in this court. The public was ordered excluded from the oral argument session and the taped record of the oral argument was ordered sealed. For the same reasons set forth in this court's order sealing records, dated January 8, 2004, we order the writ opinion in this matter sealed. (*James G. v. Superior Court* (2000) 80 Cal.App.4th 275, 277-278, fn. 1.) By separate, sealed opinion filed this date, we grant the petition for writ of mandate. The mandate record and this opinion shall remain sealed until further order of this court.

D043302 People v. Superior Court of San Diego County/R.V.

Petition granted. (Opinion Sealed) Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

D043009 People v. Knox

Modification of opinion (see order). No change in judgment.

D042939 In re Monaye D., a Juvenile

The juvenile court's order declaring Monaye a ward is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Haller, J.

D042209 People v. Chartier

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

D042540 Payne v. Volume Services America, Inc., et al.

Court convened at 9:30 A. M.

Associate Justice Gilbert Nares designated hearing officer and referee in this matter.

Deputy Clerk: C. Tunnell

Deputy Clerk: D. Moore, recording

CHP Officer: Chris Gonzales

Donna Lynn Foster in Propria Persona

The court continues the hearing of Donna Lynn Foster, CSR # 7698, Official Reporter, present on order to show cause why sanctions should not be imposed pursuant to rule 46.5 of the California Rules of Court and/or why she should not be declared not competent to act as an official reporter in any court pursuant to the provisions of Government Code section 69944 for her failure to prepare and file the reporter's transcript in the following case: Patricia Capritta Payne v. Volume Services America, Inc., et al.,
D042540

Donna Lynn Foster, previously sworn, is recalled to testify.

Lana Fruke, previously sworn, is recalled to testify.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 20, 2004 (Continued)

D042540 Payne v. Volume Services America, Inc., et al.

(Hearing Continued)

The following persons were sworn and examined:

Linda Savitz, Greg Hohman and Sandra Marlett.

Donna Foster recalled.

The following exhibit is marked for identification and received into evidence.

Respondent's Exhibit D - Letter to Mr. David A. Stevens dated January 12, 2004 from CSR
Donna Foster (received from CSR Foster)

Jill Matuk, previously sworn, is recalled to testify.

Court takes 10 minute recess, at 10:30, while Ms. Matuk is directed to show Court Reporter, Donna Foster and Lana Fruke this Court's file containing default notices sent to Court Reporter, Donna Foster.

Court reconvened at 10:45

Jill Matuk continues to testify

The following exhibit is marked for identification and received into evidence.

Courts Exhibit - 8 - Default letters (8) to CSR Donna Foster (1) May 19, 2004, DCA # D042540; (2) April 15, 2004, DCA #D043422; (3) March 23, 2004, DCA #D043455; (4) November 6, 2003, DCA #D042655; (5) October 1, 2003, DCA #D041383; (6) October 1, 2003, DCA #D042529; (7) September 10, 2003, DCA #D042702; (8) August 25, 2003, DCA #D042075

The following persons were recalled:

Donna Foster and Lana Fruke

Sharon Fujikawa, Director of Civil Operations, sworn and examined.

The Court directs Lana Fruke to provide Court Reporter, Donna Foster and this court with the following information no later than Thursday, July 22, 2004:

Did Court Reporter, Donna Foster request time off to prepare this transcript or other transcripts where a default notice was sent?

Does the Superior Court's internal records agree with the number of default notices received by Court Reporter, Donna Foster?

Determine the standard number of default notices received by all Court Reporters.

The Court directs Court Reporter, Donna Foster to provide this court with her response to the above information no later than Friday, July 23, 2004.

Court will prepare written findings and recommendation to be submitted to the Justices of this Court.
Court adjourns at 11:04 A.M.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 21, 2004

Court convened at 10:00 a.m. Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre
Clerk: J.A. Matuk

D043241 Barratt American, Inc., v. D. R. Horton San Diego Holding Company, Inc.

Cause called on merits. Janice Brown, Esq. argued for appellant. Holly Keehn, Esq. argued for respondent. Janice Brown, Esq. replied. Cause submitted.

Court recessed at 10:34 a.m. to change panels. New Panel Members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D042023 Klein v. Walgreen Company et al.

Cause called on merits. James Moneer, Esq. appeared for appellant and reserved his time for argument. Jeffrey Krinsk, Esq. appeared for appellant but did not argue. Robert Shaughnessy, Esq. argued for respondent. Scott Metzger, Esq. appeared for respondent but did not argue. James Moneer, Esq. replied for appellant. Cause submitted.

Court adjourned at 11:04 a.m.

D043543 In re Cipro Cases I and II

Let a writ of mandate issue directing the superior court to modify its order granting class certification so as to exclude all purchasers of Cipro who paid a flat copayment and who would have paid the same copayment for a generic substitute under the terms of their health insurance coverage. In all other respects, the petition is denied. Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

D044707 Barber v. Superior Court of San Diego County/Barber

The petition is denied.

D042416 Lecuyer v. Sunset Trails Apartments et al.

The portions of the judgment requiring Lecuyer to pay Sunset Trails' costs based on her failure to accept Sunset Trails' untimely and invalid section 998 offer is reversed. The portion of the judgment awarding her damages in the net amount of \$32,604.68 is thus also reversed to the extent the court reduced the award of damages by the amount of defense costs it ordered Lecuyer to pay under section 998. The remaining portions of the judgment are affirmed. The matter is remanded with directions to amend the judgment in a manner consistent with this opinion. The parties shall bear their own costs on appeal. CERTIFIED FOR PARTIAL PUBLICATION. Nares, J.; We Concur: Benke, Acting P.J., Haller, J.

D044572 Patecia F. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed as to Emeil H.

D044567 Julie R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 21, 2004
(Continued)

D044698 W. K. v. Superior Court of San Diego County/G. W.

The records in this proceeding were sealed by court order because they involve confidential strategy in a capital case. (Cal.Rules of Court, rule 12.5.) For the same reasons set forth in this court's orders sealing records filed on (July 16 and 21, 2004, 80 Cal.App.4th 275, 277-278, fn.1.) By separate sealed order filed this date, we deny the petition for writ of mandate. The mandate record and the order filed shall remain sealed until further order of this court.

D044698 W. K. v. Superior Court of San Diego County/ G. W.

Petition denied. (Order sealed.)

D044109 Walter S. Sr. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Huffman, J.; We Concur: McConnell, P.J., Nares, J.

D042462 People v. Cohen

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D042529 Rincon Del Diablo Municipal Water District et al. v. San Diego County Water Authority et al.

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Irion, J.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 22, 2004

D043426 In re Darvin S., a Juvenile

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Haller, J.

D042429 Raike III v. Hampton/Raike Financial Group, Inc.

RFG's appeal is dismissed. The judgment is affirmed. Sanctions are imposed jointly and severally on RFG and Raike in the amount of \$22,302, payable to Hampton. Hampton is also entitled to costs on appeal. McConnell, P.J.; We Concur: McIntyre, J., Aaron, J.

D042171 Lim v. Do

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D042614 Knaak Family Limited Partnership v. McLean-King

We affirm the order denying King's section 473 motion. Haller, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D042801 Howard Jarvis Taxpayers Assn. et al. v. City of San Diego

Respondents' petitions for rehearing are denied.

D044593 Kroll v. Superior Court of San Diego County/Delao-Clayton

The petition is denied.

D044661 San Diego County Health and Human Services Agency v. Superior Court of San Diego County/Melina B. et al.

The petition is denied because the parties have a pending appeal, which is expedited by separate order.

D044594 In re Simmons on Habeas Corpus

The petition is denied.

D044544 Citibank South Dakota N.A.. v. Geshay

The appeal, filed June 8, 2004, is dismissed on the grounds that it is from a nonappealable, interlocutory order.

FOURTH APPELLATE DISTRICT
DIVISION ONE
JULY 23, 2004

D044572 Patecia F. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Writ of Mandate under Rule 39.1B will not filed as there are no viable issues for writ review. The case is dismissed as to Patecia F.

D044430 People v. Redar

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

D043235 In re A. O. et al., Juveniles

The opinion filed June 28, 2004 is ordered certified for publication.

D043244 Zied-Campbell et al. v. Saenz

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D043322 In re Ruben F., a Juvenile

The order is affirmed. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

D043752 People v. Aguayo

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Haller, J.

D044518 Scott v. Workers' Compensation Appeals Board of the State of California/Chilcote, Inc. et al.

The petition is denied.

D042854 Furgatch v. San Diego Unified Port District et al.

The judgment is reversed. The matters are remanded for further proceedings consistent with this opinion. Furgatch shall recover his costs on appeal. O'Rourke, J.; We Concur: Nares, Acting P.J., McDonald, J.